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Supreme Court of the United States

OCTOBER TERM, 1945

NO. 800

H. LESLIE QUIGG,
Petitioner,

vs.

CHARLES O. NELSON,
Respondent.

BRIEF OF RESPONDENT OPPOSING PETITION FOR WRIT OF CERTIORARI AND OPPOSING PRINTING ABBREVIATED RECORD

HISTORY OF THE CASE

In March, 1928, the Petitioner, H. Leslie Quigg, was suspended as Chief of Police of the City of Miami, because of the fact that he had been indicted upon a criminal charge by a local Grand Jury, and upon the additional grounds of neglect of duty, and for the good of the service. The City Commission at that time, after investigation and hearing, found Petitioner guilty and removed him from office. In August, 1931, Petitioner Quigg brought an action in Quo Warranto to regain his office

as Chief of Police of the City of Miami. One of his attorneys in this action was the Honorable Ross Williams, who presided as Judge in our local Circuit Court in the present proceedings and who ruled in favor of Quigg. This Respondent asserted these facts as grounds for disqualification against Judge Williams and assigned as error his Order denying the Application to Disqualify.[1] Petitioner was unsuccessful in his suit for reinstatement on this prior occasion, as now, even though he prosecuted it also to the Supreme Court of Florida.[2]

On July 8, 1937, however, immediately following the election to office of a locally termed "Termite" Commission, which was recalled from office by the people of the City of Miami less than two years after its election, Petitioner Quigg was appointed Chief of Police of Miami for the second time.[3]

Within a short period of time after Petitioner was reappointed to the office of Chief of Police as hereinabove set forth, the Division of Police became infected with discord, disunity, and strife which impaired the efficienty of the organization, and which was created through the failure of Petitioner Quigg to properly perform the functions and duties of his office.[4] It became inefficient and unreliable. The Division of Police became a veritable "hot-

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[1] Transcript of Record Pages 49 and 74.

[2] Quigg vs. Reeve, 106 Fla. 28, 142 So. 654.

[3] Exhibit A. Vol. V, pps. 1149, 1150, 1151.

[4] Exhibit A, Vol. II, pp. 427, 428, 444, 448, 459, 461, 462, 463, 465, 566, 567, 581, 593, 495, 499, 500, 501, 506, 507, 510; Vol. IV, pp. 1004, 1007, 1008, 1009, 1014, 1027, 1030; Vol. V, pp. 1125, 1137, 1141, 1148, 1149, 1150, 1154, 1155.

bed" of politics, with gambling prevalent throughout the City of Miami.[1]

This was the condition of the Division of Police under Petitioner Quigg when City Manager A. B. Curry was appointed to his office February 16, 1942. Numerous attempts were made by the City Manager to eradicate these conditions and to improve the police organization through administrative orders, without placing charges against Petitioner. The City Manager endeavored to eliminate the quarreling between Quigg and his vice-squad subordinate, Lieutenant C. O. Huttoe, by assigning Huttoe to duties connected with the National Defense work carried on by the Federal Bureau of Investigation, with Huttoe's offices outside the Police Station.[2] It was found, however, although the City Manager had given strict orders to Quigg to enforce the gambling laws, that gambling increased. He was forced, therefore, in order to insure the enforcement of the gambling laws to reassign Lieutenant Huttoe as head of the Vice Squad. Both Quigg and Huttoe then served as a check upon one another. Honorable Cecil Curry, Judge of our Municipal Court for approximately ten years, testified at the Quigg removal proceedings:

"Q. Kind of check on each other, aren't they. So they cannot have any favorite places?

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[1] Exhibit A, Vol. II, pp. 442, 444, 498, 499, 500; Vol. IV, pp. 937 985, 990, 1004, 1032, 1033; Vol. V, pp. 1122, 1123, 1137, 1141, 1151, 1152, 1156, 1157, and Exhibit A, Respondent's Exhibit 12, p. 16.

[2] Exhibit A, p. 38 of Exhibits.

A. They have been certainly embarrassing each other."[1]

On March 29, 1944, between the hours of 10:00 p. m. and 12:10 a.m., the public streets, thoroughfares and highways in and about the Dade County Court House and the Police and Fire Stations of the City of Miami, Florida, were blocked and obstructed as a result of a strike or demonstration of bus drivers, employees of the Miami Transit Company and the Miami Beach Railway. Busses were parked in the center of and diagonally across Flagler Street, main thoroughfare of Miami; across intersections; in front of the fire station so that it was blocked; private cars were hemmed into the curb; ingress and egress to the Court House was blocked, and several of the other public streets surrounding the Court House were crammed and blocked off with busses.[2] Numerous municipal traffic ordinances and a state statute prohibiting obstruction of public streets and highways were violated.

This strike or demonstration was called upon orders of W. O. Frazier, President of the Bus Drivers' Union, of which the striking bus drivers were members, in an attempt to force the Municipal Judge of Miami to change a jail sentence imposed upon one of the members of the union for assault and battery committed against a taxi driver; such sentence having been imposed by Judge Cecil Curry of the Municipal Court of the City of Miami on the morning of March 29, 1944, who testified it was one of the most brutal cases to come to his attention in ten

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[1] Exhibit A, Vol. IV, Pg. 1000.

[2] Exhibit A, City Exhibits Nos. 1, 3, 4, 5, 6, 7, 8 and Exhibit A, Vol. I, pp. 63, 64, 67, 68, 69, 70.

years as Judge.[1] As an excuse for the strike or demonstration, Frazier, union leader, informed the Petitioner and drivers that he had been unable to obtain an appeal bond for the convicted bus driver and had offered as much as $10,000. in cash to procure said bond, but that City officials had refused to accept a bond in any sum.[2] Statutes of Florida fix the maximum appeal bond from a Municipal Court at two hundred dollars ($200.00), which fact Petitioner should have known or did know. The Petitioner, H. Leslie Quigg, as Chief of Police of the City of Miami, was notified that some busses were beginning to congregate in and about the Court House and Police and Fire Stations at approximately 9:45 p.m., by Police Captain Hardy Bryan, commanding the police shift on duty at said time. This was approximately two and one-half (2½) hours before the streets were opened. Although Captain Bryan telephoned Quigg three times in fifteen minutes, he received no instructions or orders but Quigg informed the Captain that he would be down shortly[3] Quigg testified that he could have called three hundred sixty-eight (368) policemen in from fifteen to forty-five minutes but neglected to do so, and the Supreme Court of Florida commented upon this fact as further proof of his incompetency.

At approximately 10:30 p.m. the Petitioner, Quigg, arrived at the Police Station and closeted himself with the union bus driver leaders in his office[4] In the meantime, the streets were congested and obstructed by busses

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[1] Exhibit A, Vol. I, p. 190.
[2] Exhibit A, Vol. III, pp. 749, 750.
[3] Exhibit A, Vol. I, pp. 236, 237.
[4] Exhibit A, Vol. I, p. 238.

parked in violation of traffic ordinances of the City of Miami and the statutes of the State of Florida, and in view of Petitioner, but no orders were given by him to enforce the laws of either the City or the State. Newspaper photographers, one of whom was an ex-service man wounded in the Guadalcanal campaign, were forbidden by the union leaders and drivers from taking pictures on the public streets, reporters and photographers were threatened with physical violence by bus drivers in the presence of police, and were chased through the Police Station by bus drivers in an attempt to smash the newspaper cameras.[1] During the time Petitioner was closeted with the union leaders, one shift of police officers numbering approximately forty men, went off duty and another shift numbering approximately forty men came on duty. None of these men were ordered to stay at the scene of the strike or demonstration; nor was any general or emergency alarm sounded for other regular members of the Police Force or its reserves.[2]

Early in the meeting held between the union leaders and Petitioner Quigg, the City Manager of the City of Miami, A. B. Curry, who is the administrative head of the entire City government, arrived at the office of the Chief of Police where the latter was closeted with the Union President Frazier and Union Secretary Farlow. As the City Manager approached the door, W. O. Frazier, the Union President, jumped to his feet, and addressing the City Manager in the presence of Petitioner Quigg, said:

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[1] Exhibit A, Vol. I, pp. 81, 82, 83, 84, 221, 222, 223, and Vol. II, pp. 256, 257, 258, 259, 260, 261

[2] Exhibit A, pp. 239, 240.

"Now, there's your god-damn busses. Now what are you going to do with them?"[1]

The City Manager thereupon ordered Petitioner to arrest every man who was violating the law, and Petitioner admits having received the order.[2] This order was not obeyed, nor was any sincere effort made to do so. During the course of the conference in the office of Petitioner Quigg, W. O. Frazier, President of the Bus Drivers' Union, in the presence of Petitioner Quigg, referred to the Municipal Judge of the City of Miami, as a "conch son-of-a-bitch."[3]

Petitioner surrendered to the demands of the union bus drivers and brought about the release of the convicted bus driver on bond, and at approximately 12:10 a.m. the streets were cleared solely because the convicted bus driver appeared on the steps of the Court House in company with the union leaders, and upon an order having been given by W. O. Frazier, Union President, to the drivers to get the busses rolling because the convicted member of the union had been delivered from jail. No arrests were made by Petitioner Quigg and no attempt has been made by him to bring any law violators to justice.

On April 3, 1944, the City Manager of the City of Miami launched an investigation into the bus strike of March 29, 1944, requesting and receiving the assistance of its City Attorneys and the County Solicitor, Robert R.

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[1] Exhibit A, Vol. II, p. 291.
[2] Exhibit A, Vol. II, p. 291; Vol. III, p. 740.
[3] Exhibit A, Vol. I, pp. 71, 72.

Taylor. This was five days after the demonstration of March 29th and Petitioner still had made no effort to bring the law violators to justice. The investigation which lasted over one week revealed there was not even one record or scrap of paper in the police department revealing any laws had been violated or that there had ever been a strike or demonstration on March 29th! As a result of his investigation, the City Manager, on April 10, 1944, lodged nine charges of suspension against the Petitioner alleging neglect of duty, misfeasance, failure to obey orders as a consequence of the bus strike on March 29, 1944, and further bringing him before the Commission for incompetency publicly displayed because he had allowed a feud or quarrel which he had carried on for a period of years with his vice-squad subordinate, Lieutenant C. O. Huttoe, over gambling operations to disorganize and disunite the members of the Division of Police, dividing the Division of Police into camps, and in addition, with failing to establish proper and efficient police methods and procedures.[1] On the same date, the City Manager certified the suspension charges to the Commission of the City of Miami which, within five days, convened for the purpose of conducting a hearing upon the charges[2] The County Solicitor lodged numerous charges in the County Courts against the union leader, W. O. Frazier, and approximately ninety-five bus drivers for blocking public highways, etc. On February 13, 1946, they were convicted in the Court of Crimes, for Dade County, Florida, for violation of the state law.

The written charges of suspension against Petitioner Quigg were as follows:

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[1] Tr. pp. 3, 4, 14.

[2] Tr. pp. 5.

"1. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to enforce the ordinances of said City and the criminal statutes of the State of Florida at the time of violations thereof committed in your presence and under your observation at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

"2. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to give orders or instructions to the officers and other personnel of said Division of Police to enforce the ordinances of said City and the criminal statutes of the State of Florida, during or subsequent to the violations thereof committed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

"3. You are guilty of misfeasance in the office of Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that, in violation of your oath of office, you devoted your time and your energies at and during the time of a strike of bus drivers in said City on the night of March 29, 1944, to meeting the demands of the leaders of the drivers, who were violating in your presence and under your observation the ordinances of said City and the criminal statutes of the State of Florida, and in aiding and abetting said leaders to effect the release from the City jail of a prisoner who had been lawfully convicted in the Municipal Court of said City and had been lawfully sentenced to imprisonment in said jail.

"4. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in

the Division of Police of the City of Miami, Florida, to cause or to bring about the apprehension, arrest and punishment of any or all of numerous persons who violated the ordinances of said City and the criminal statutes of the State of Florida at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

"5. You are guilty of neglect of duty by reason of your neglect and failure, as Chief of Police in the Division of Police of the City of Miami, Florida, to take any action or measures of any kind which would prevent at any future time a recurrence of a public emergency and of violations of law similar to those which prevailed at and during the time of a strike of bus drivers in said City on the night of March 29, 1944.

"6. You are guilty of failure to obey orders given by proper authority by reason of your neglect and failure, while serving as Chief of Police in the Division of Police of the City of Miami, Florida, to obey and carry into effect orders to enforce the traffic ordinances of said City, given to you by the City Manager of said City on the night of March 29, 1944, at and during the time of a strike of bus drivers in said City.

"7. You are guilty of incompetence as Chief of Police in the Division of Police of the City of Miami, Florida, by reason of the fact that you have permitted said Division of Police to fall into and be in a state of disorganization, disunity, discord and inefficiency.

"8. You have become and are unfit to serve as Chief of Police of the City of Miami, Florida, for the reason that you have lost and do not have the confidence and respect of the public of said City.

"9. Your acts of commission and of omission which are set forth and described in the above and foregoing grounds for your suspension, constitute conduct unbecoming a police officer of the City of Miami, Florida, and render you unfit to serve as Chief of Police in the Division of Police of said City."

The act of suspension by the City Manager was authorized under the provisions of Section 26, of the Charter of the City of Miami, which is Chapter 10847, Acts of 1925, of the Legislature of the State of Florida, which in part, reads as follows:

"The City Manager shall have the exclusive right to suspend the Chief of Police and Fire Chief for incompetence, neglect of duty, immorality, drunkenness, failure to obey orders given by proper authority, or for any other just and reasonable cause."

In conformity with subsequent provisions of said section of the City Charter, as hereinafter set forth, the City Manager forthwith certified the fact of suspension, together with the causes of suspension, to the Commission of the City of Miami, which within five (5) days from the date of receipt of such notice, proceeded to hear the charges and to render judgment thereon, under the terms of which the judgment is final:

"* * * If either of such chiefs be so suspended the City Manager shall forthwith certify the fact, together with the cause of suspension, to the Commission who within five (5) days from the date of receipt of such notice, shall proceed to hear such charges and render judgment thereon, which judgment shall be final."

At the commencement of the hearing held pursuant to the charter provisions hereinabove set forth, which continued for approximately nineteen (19) days, the Petitioner appeared in person, was represented by three attorneys, and was given full opportunity to present all witnesses, evidence and other matters which he deemed pertinent to his defense. Upon motion having been submitted by Counsel for Petitioner, the Commission ordered the City Attorneys of Miami to furnish a bill of particulars to Petitioner enumerating the numerous traffic ordinances violated, together with the names of the drivers participating, which order was complied with.[1] At the conclusion of the hearing the Commission of the City of Miami found the Petitioner guilty of charges numbered 1, 4, 7 and 9 and removed him from office.

After the removal of the Petitioner from office, as hereinabove recited, the Respondent, Charles O. Nelson, was lawfully appointed to the office of the Chief of Police of the City of Miami. Subsequent to the appointment of the Respondent, the Petitioner filed an action in Quo Warranto against the Respondent seeking to regain his office as Chief of Police. Circuit Judge Ross Williams, who had been attorney for Petitioner in an identical proceeding seeking his return to office after a prior removal from the same office, ordered his reinstatement. The Respondent directed an appeal from the latter order to the Supreme Court of the State of Florida upon numerous grounds. After extensive briefs had been filed by each of the parties hereto, and after oral argument had been made before the Supreme Court of Florida, com-

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[1] Exhibit A, Vol. I, pp. 21, 22, 23, 24, 34, 35, 36, 37, 38, 38A, 38B.

posed of seven (7) Justices, a unanimous decision was rendered reversing the decision of Circuit Judge Ross Williams. The decision of the Supreme Court of Florida declared that the suspension and removal of Quigg was in compliance with statutory requirements; found the Petitioner guilty of the charges which caused his dismissal by the Commission of the City of Miami, and declared said Petitioner unfit to hold the office of Chief of Police of the City of Miami. A copy of the unanimous decision by the Supreme Court of the State of Florida in favor of the Respondent herein, is attached hereto and appears in the appendix of this brief.

SUMMARY OF ARGUMENT

POINT A. The sole federal question attempted to be raised by Petitioner was with reference to Charge No. 7, dealing with his inefficiency and neglect of duty over a period of years, the decision of which was not necessary to the determination of this case by the Supreme Court of the State of Florida, because the decision of said Court was based almost exclusively upon Charges 1, 4 and 9 relating to the neglect of duty by Petitioner on March 29, 1944.

POINT B. In the removal of public employees the decision of a state court that the removal procedure was regular and under a constitutional and valid statute must generally be conclusive in the Supreme Court of the United States.

POINT C. Under Florida law, proceedings of the character under which Petitioner was removed from office is neither a judicial or quasi-judicial function but is ad-

ministrative and the formalities of a criminal prosecution or technical rules common to courts of justice are not applicable.

POINT D. An oath was administered to witnesses both for and against Petitioner by the Mayor of the City of Miami, presiding officer of its City Commission, even though there is no statute requiring the administration of an oath in proceedings of this character, and the Mayor had lawful authority to administer an oath.

POINT E. Petitioner has not shown that he was deprived of any constitutional right as a consequence of the removal of Charge Number 7 and its subsequent reinstatement.

POINT F. Commissioner Hosea who Petitioner attempted to disqualify on the ground of prejudice, denied any prejudice, the record reveals none, and there is no provision for the disqualification of a Commissioner in proceedings of this sort or for the qualification of a successor.

POINT G. Statutory requirement prescribing a two-third (2/3) vote to effect the removal of a municipal officer is applicable only where there is no provision in a municipal charter prescribing removal procedure such as is present in the Charter of the City of Miami.

ARGUMENT

POINT A. The sole federal question attempted to be raised by Petitioner was with reference to Charge No. 7, dealing with his inefficiency and neglect of duty

over a period of years, the decision of which was not necessary to the determination of this case by the Supreme Court of the State of Florida, because the decision of said Court was based almost exclusively upon Charges 1, 4 and 9 relating to the neglect of duty by Petitioner on March 29, 1944.

A study of the record in this cause together with the petition and brief of Petitioner reveals that the sole attempt to raise a federal constitutional question was made in his Quo Warranto Information filed in the local Circuit Court in which it was stated that the removal and the subsequent reinstatement of Charge No. 7 was a violation of Section 12 of the Declaration of Rights of the Florida State constitution and contrary to the Fourteenth Amendment of the Constitution of the United States. (Tr. 20) Charge No. 7 was but one of four charges upon which Petitioner was found guilty and removed from office by the Commission of the City of Miami, and had nothing to do with neglect of duty charges arising out of the occurrence of March 29, 1944. The Supreme Court of the State of Florida found the removal proceedings in conformity with statutory law on all four charges and that a full and complete hearing had been had. It was not necessary for a determination of this cause for the Supreme Court of the State of Florida to decide the purported federal question, and the judgment of this Court could have been rendered upon the three charges other than Charge No. 7. The decision of the Supreme Court of Florida is based almost exclusively upon the remaining three charges against Petitioner, to-wit, one (1), four (4) and nine (9) relating to the bus strike with but one reference to the substance and proof as to Charge No. 7.

"It is settled law that where the record discloses that the judgment of a state court was based not alone upon a ground involving a federal question, but also upon an independent ground of state procedure involving no federal question and broad enough to maintain the judgment, this court will not take jurisdiction to review such Judgement. * * *" **People ex rel. Doyle v. Atwell** (1923) 261 U. S. 590, 43 S. Ct. 410, 67 L. Ed. 814; **Eustis v. Bolles,** 150 U. S. 3611, 14 Sup. Ct. Rep. 131; **McCoy v. Shaw,** 48 S. Ct. 519, 277 U. S. 302, 72 L. Ed. 891; **Fox Film Corporation v. Muller,** 56 S. Ct. 183, 296 U.S. 207, 80 L. Ed. 158;**U. S. v. Hastings,** 56 S. Ct. 218, 296 U. S. 188, 80 L. Ed. 148; **Radio Station WOW v. Johnson,** 65 S. Ct. 1475;**Williams v. Kaiser,** 65 S. Ct. 363, 323 U. S. 471.

"* * * To give this Court jurisdiction of a writ of error to a state court it must appear affirmatively, not only that a Federal question was presented for decision but that its decision was necessary to the determination of the case, and that it was actually decided, or that the judgment as rendered could not have been rendered without deciding it."

Adams v. Russell (Mich. 1913) 229 U. S. 353, 33 S. Ct. 846, 57 L. Ed. 1224.

"* * * Yet if it also appears that the judgment of the state court against the plaintiff in error was based upon a question of general law broad enough to support the decision, this court will not consider the federal question, though it was considered and determined by the court below adversely to the plaintiff in error."

Consolidated Turnpike Co. v. Norfolk, Etc., R. Co. (Va. 1913) 228 U. S. 596, 33 S. Ct. 605, 57 L. Ed. 982.

Arkansas Southern R. Co. v. German Nat. Bank (Ark. 1907) 207 U. S. 270, 25 S. Ct. 78, 52 L. Ed. 201.

Decisions of state courts based on local laws not involving constitutional questions are not reviewable in the Federal Sureme Court.

Hibben v. Smith (Ind. 1903) 191 U. S. 310, 24 S. Ct. 88, 48 L. Ed. 195; **Smith v. Indiana** (Ind. 1903) 191 U. S. 138, 24 S. Ct. 51, 48 L. Ed. 125; **The Winnebago** (Mich. 1907) 205 U. S. 354, 27 S. Ct. 509, 51 L. Ed. 836;**Detroit, Etc., R. Co. v. Fletcher Paper Co.** (1918) 248 U. S. 30, 39 S. Ct. 13, 63 L. Ed. 107, affirming on other grounds (1917) 198 Mich. 469, 164 N. W. 528; **Palmer v. Ohio** (1918) 248 U. S. 32, 39 S. Ct. 16, 63 L. Ed. 108, dismissing writ of error to review (1917) 96 Ohio St. 513, 118 N. E. 102; **Hartford L. Ins. Co. v. Blincoe** (1921) 255 U. S. 129, 41 S. Ct. 276, 65 L. Ed. 549, affirming (1919) 270 Mo. 316, 214 S. W. 207, 12 A. L. R. 758; **Campbell v. Olney** (Tex. 1923) 262 U. S. 352, 43 S. Ct. 559, 67 L. Ed. 1021.

A party who has raised only one federal question in the state court cannot come into this court from a state court and argue the question thus raised, and also another not connected with it which was not raised in any of the courts below, and does not necessarily arise on the record, although an inspection of the record shows the existence of facts upon which the question might have been raised.

Dewey v. Des Moines (Iowa, 1899) 173 U. S. 193, 19 S. Ct. 379, 43 L. Ed. 665.

A federal question cannot be assumed to have been raised and passed on in a state court so as to give jurisdiction to the Supreme Court when nothing appears on the record to show on what grounds the decision of the matter in which the federal question is alleged to be involved was made.

> **Caperton v. Bowyer** (W. Va. 1871) 14 Wall. 216, 20 L. Ed. 882.

The claim in the state trial court that a ruling was contrary to the United States Constitution, 14th Amendment, affords no basis for a writ of error from the Federal Supreme Court, where no such contention was made in the assignment of errors in the highest court of the state, nor was it, so far as appears by the record, otherwise presented to or passed upon by that court.

> **Hiawassee River Power Co. v. Carolina-Tennessee Power Co.** (1920) 252 U. S. 341, 40 S. Ct. 330, 64 L. Ed. 729, dismissing writ of error to review (1918) 175 N. C. 668, 96 S. E. 99.

Petitioner did not raise his purported federal questions regarding the other three charges until his petition for rehearing was filed before the Supreme Court of Florida. The law is well settled that an attempt to raise federal questions on a petition for rehearing comes too late to support Certiorari proceedings in the Supreme Court of the United States.

> "The attempt to assign new errors in the petition for rehearing, which was overruled without an opinion passing on Federal questions cannot avail."

Waters-Pierce Oil Co. v. Texas (Tex. 1909) 212 U. S. 112, 29 S. Ct. 227, 53 L. Ed. 431.

The suggestion of a violation of a federal right, first made in a petition for the review, in the highest state court, of the judgment of an intermediate appellate court, is too late to serve as a basis for the exercise of the appellate jurisdiction of the Federal Supreme Court, where it does not affirmatively appear that the state court passed upon the federal question, and the denial of the petition may well have been upon the ground that the question, not having been suggested in the court below, could not be made available on appeal.

Chicago, Etc., R. Co. v. McGuire (Ind. 1905) 196 U. S. 278, 85 S. Ct. 200, 49 L. Ed. 413.

"* * * 'The claim under the Carmack Amendment was first set up and asserted in a petition for rehearing after the judgment in the trial court was affirmed by the Supreme Court of the state. The petition was not entertained, but was denied without passing upon the federal question thus tardily raised. That question, therefore, is not open to consideration here.'"

St. Louis, etc., R. Co. v. Shepherd (Okl. 1916) 240 U. S. 240, 36 S. Ct. 274, 60 L. Ed. 622.

A federal question first raised by a petition for a rehearing in the highest state court is too late to support the appellate jurisdiction of the Federal Supreme Court, where the state court, in denying the petition, made no reference to the federal question.

McMillen v. Ferrum Min. Co. (Colo. 1905) 197 U. S. 343, 25 S. Ct. 533, 49 L. Ed. 784.

The assertion that the Supreme Court of Florida committed error in sustaining Charges 1, 4 and 9 lodged against Petitioner because of his neglect, duty, and failure to enforce the municipal traffic ordinances and state law against blocking a public highway, because the provisions of the traffic code of the City of Miami permits a police officer to direct traffic contrary to the provisions of the Miami traffic code in cases of a fire or a traffic accident, etc., does not present a federal question. This also holds true when Petitioner asserts that the Supreme Court of Florida was in error when it held that a vote of three (3) of the Commissioners of the City of Miami was legally sufficient to remove Petitioner from office and that the oath administered by the Mayor of the City of Miami to witnesses for and against Petitioner was in conformity with State law. Purported errors of state courts in reviewing state statutes do not present federal questions.

The fact that the Supreme Court of Florida may have determined that the strike or demonstration of bus drivers, against whom Petitioner failed, neglected and refused to enforce the laws was a strike in the instant case, and when construing a particular state statute in the case of **State ex rel. Frazier vs. Coleman,** 23 So. (2d) 477, deciding that the Florida Labor Law was not violated by Frazier that night because it was no strike within the meaning of this labor act, confers no ground for federal jurisdiction. Petitioner fails to inform this Court that in the **Frazier vs. Coleman** decision the Supreme Court of Florida said the strike or demonstration * * * "was a lawless and contumacious act, directed against the

Municipal Court of Miami and its authority in defiance of law and order," Petitioner fails to inform this Court that in the earlier case of **State vs. Coleman,** 20 So. (2d) 911, the Supreme Court of Florida upheld one of our local Circuit judges in remanding Frazier to the custody of the Sheriff for violation of the state statute prohibiting obstruction of a highway. This charge against Frazier grow out of his activities on March 29, 1944, the night of the bus strike. On February 13, 1946, W. O. Frazier and some sixty-five bus drivers were convicted in the Court of Crimes for blocking public highways.

Decisions of state courts upon a question of law will not be reviewed in the Supreme Court of the United States as presenting a question of violation of the Fourteenth Amendment because such decisions are asserted to be wrong and contrary to previous decisions of the same Court.

Patterson v. Colorado (Colo. 1907) 205 U. S. 454, 27 S. Ct. 556, 51 L. Ed. 879, 10, Ann. Cas. 689.

"'A mere contest over a state office, dependent for its solution exclusively upon the application of the constitution of a state or upon a mere construction of a provision of a state law involves no possible federal question. Taylor v. Beckham (Ky. 1900) 178 U. S. 548, 20 S. Ct. 890, 1009, 44 L. Ed. 1187.'"

Elder v. Colorado (Colo. 1907) 204 U. S. 85, 27 S. Ct. 223, 51 L. Ed. 381, dismissing writ of error.

"* * * The states are left with a wide range of legislative discretion, notwithstanding the provisions of the Fourteenth Amendment to the Federal Con-

stitution, and their conclusions respecting the wisdom of their legislative acts are not reviewable by the courts."

Arizona Employers' Liability Cases (1919) 250 U. S. 400, 39 S. Ct. 553, 63 L. Ed. 1058, 6 A. L. R. 1537, affirming (1919) 19 Ariz. 151, 182, 166 P. 278, 1183, 165 P. 1101, 1185.

"* * * Save in exceptional circumstances, the United States Supreme Court must accept as controlling a decision of the state courts on questions of local law, both statutory and common.

American Ry. Express Co. v. Commonwealth of Kentucky (Ky. 927) 273 U. S. 269, 47 S. Ct. 353, 71 L. Ed. 639.

Petitioner has not been deprived of pension rights to this day and immediately after the decision of the Supreme Court of Florida went against him he filed an application for his pension allowance which has not been acted upon because of this litigation.

POINT B. In the removal of public employees the decision of a state court that the removal procedure was regular and under a constitutional and valid statute must generally be conclusive in the Supreme Court of the United States.

On Page 1 of the Opinion of the Supreme Court of the State of Florida in the present matter, appears the following language:

"* * * The City Charter of Miami authorizes such

action and prescribes the procedure to be followed. We find that there was a legally sufficient compliance with statutory requirements in every particular in connection with the hearing before the City Commission. As a result of this full and complete hearing, the City Commission removed Mr. Quigg from the office of Chief of Police."

The above excerpt from the decision of the highest appellate court in the State of Florida determines definitely that the removal proceedings of the Petitioner, H. Leslie Quigg, were held in conformity with the Constitution and Statutes of the State of Florida and in compliance with the charter provisions above recited.

"* * * No such fundamental rights were involved in the proceedings before the governor. In its internal administration the state (so far as concerns the Federal government) has entire freedom of choice as to the creation of an office for purely state purposes, and of the terms upon which it shall be held by the person filling the office. And in such matters the decision of the state court that the procedure by which an officer has been suspended or removed from office was regular and was under a constitutional and valid statute must generally be conclusive in this Court."

"* * * The procedure provided by a valid state law for the purpose of changing the incumbent of a state office will not in general involve any question for review by this court. A law of that kind does by providing for the carrying out and enforcement of a policy of a state with reference to its political and internal administration, and a decision of the state court in regard to its construction and validity will generally be conclusive here. The facts would have to be most rare and exceptional which will give

rights in a case of this nature to a Federal question. * * *"

Wilson v. State of North Carolina, ex rel. Caldwell, 169 U. S. 586, 18 S. Ct. 435, 42 L. Ed. 865.

It appears that ample provision has been made for the trial of the Petitioner before a court of competent jurisdiction; for bringing the party against whom the proceeding is had before the court, and notifying him of the case he is required to meet; for giving him an opportunity to be heard in his defense; for the deliberation and judgment of the court; for an appeal from this judgment to the highest court of the State, and for hearing and judgment there. A mere statement of the facts carries with it a complete answer to all the constitutional objections.

Kennard v. Louisiana (Morgan), 92 U. S. 480 (23:478).

A state statute regulating proceedings for the removal of a person from a state office is not repugnant to the Constitution of the United States as it provided for bringing the party against whom the proceeding was had into court, and notifying him of the case he had to meet; for giving him an opportunity to be heard in his defense and for the deliberation and judgment of the court.

John Foster, County Attorney of Saline County, Kansas, Plff. in Err., v. State of Kansas, ex rel. W. A. Johnston, Attorney General of the State of Kansas, 112 U. S. 205, (28:629)

POINT C. Under Florida law, proceedings of the

character under which Petitioner was removed from office is neither a judicial or quasi-judicial function but is administrative and the formalities of a criminal prosecution or technical rules common to courts of justice are not applicable.

In the case of **Jenkins vs. Curry,** City Manager, et al. reported in 18 So. (2d) 521, the principle of law applicable to the removal of public employees is announced in this language:

> "* * * In proceedings on hearing before a Miami Director of Public Safety on drunkenness charges against policeman, it was unnecessary to observe formalities in introduction of testimony in criminal prosecution or technical rules common to courts of justice."

In the case of **Owen vs. Bond,** 83 Fla. 495, 91 So. 686, we learn that the removal proceedings of public employees in the State of Florida are neither a judicial nor quasi-judicial function:

> "* * * The action of the City Council or City Commission of the City of Jacksonville in approving or rejecting the act of the mayor in suspending a person occupying the position of chief of police, is not a judicial or a quasi-judicial function."

Supporting the decisions hereinabove referred to are the following Florida cases:

Bryan vs. Landis, 106 Fla. 19, 142 So. 653.
Callahan vs. Curry, 153 Fla. 739, 18 So. (2d) 521.
State ex rel. Murray v. Lee, 4 So. (2d) 117, 148 Fla. 258.

POINT D. An oath was administered to witnesses both for and against Petitioner by the Mayor of the City of Miami, presiding officer of its City Commission, even though there is no statute requiring the administration of an oath in proceedings of this character, and the Mayor had lawful authority to administer an oath.

Petitioner has cited no statute, ordinance or regulation which requires the administration of an oath to witnesses in removal proceedings in the State of Florida. The administration of an oath is required in our criminal and civil courts. The Respondent believes however, that an oath should be administered in proceedings of this type in fairness to all parties concerned, and an oath was administered in the instant case by the Mayor of the City of Miami who is the presiding officer of its City Commission.

The Mayor was vested with the lawful authority to administer an oath. Under Section 165.06, Florida Statutes, 1941, the Mayor of a Florida municipality after having the oath administered to him, is given the power to administer oaths.

> "* * * And the mayor, upon being so qualified, shall administer to the aldermen and the other officers-elect the like oath, * * *"

Under Section 168.02, Florida Statutes, 1941, the Mayor of a Florida municipality is given the power to sit as a municipal judge and to administer oaths.

> "* * * The mayor may, * * * administer oaths, inquire and examine into the truth or falsity of such charge, * * *"

Under Section 14 of the Charter of the City of Miami, which is Chapter 10847, Acts of 1925, Statutes of Florida, the Commission, or any committee thereof, is empowered to investigate the official acts and conduct of any city official.

> "* * * In conducting such investigations the Commission, or any committee thereof, may require the attendance of witnesses and the production of books, papers and other evidence, * * *"

In Section 25 of the Charter of the City of Miami it is stated:

> "* * * The Director of Public Safety in any investigation shall have the same power to administer oaths and secure the attendance of witnesses and the production of books and papers as is conferred upon the Commission. * * *"

Under Section 41 of the Charter of the City of Miami, the Mayor and every Member of the Commission is affirmatively declared to have power and authority to administer oaths.

> "* * * The Commission shall constitute the Board of Equalization. * * * Any member of said board may administer an oath and examine witnesses in relation to the matters requiring investigation before the said board. * * *"

Thus it is seen that although the administration of an oath is not required by any statute of this State in proceedings of this character, an oath was in fact administered by the Mayor of the City of Miami to witnesses for the Prosecution and to witnesses for the De-

fense and the Mayor had the lawful right to administer an oath. The Supreme Court of the State of Florida passed upon the validity of this procedure and decided it was in conformity with law.

POINT E. Petitioner has not shown that he was deprived of any constitutional right as a consequence of the removal of Charge Number 7 and its subsequent reinstatement.

The authorities cited under Point C. as hereinabove set forth, should make it clear that under Florida law removal proceedings affecting public employees are administrative and are not subject to the niceties, technicalities and rigidity of the rules and laws governing procedure in criminal actions. All that is required is that substantial justice be done and that the defendant be permitted to present his defense to the accusations against him.

It was on motion of Counsel for Petitioner that Charge No. 7 was dismissed by the Commission without consent of the City Manager who preferred the charge. Counsel for Petitioner Quigg threatened to keep the hearing before the City Commission in session for weeks if Charge Number 7. was not removed[1] and threatened also to bring scandal upon many people in Miami, both living and dead,[2] if said Charge was not eliminated. The Commission disturbed by these threats removed the charge but after more deliberate thought and before any testimony was

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[1] Exhibit A, Vol. I, Pgs. 135, 137, 139; Vol. II, Pgs. 380, 381,412.

[2] Exhibit A, Vol. V, Pgs. 1072, 1073.

presented by Petitioner in his defense of any of the charges, the said Charge No. 7 was reinstated, evidence produced in support thereof, and the trial proceeded. If the Commission had the authority to remove said charge without the consent of the City Manager who preferred the charge, the Commission also had the right to reinstate the charge without the consent of the City Manager, so long as the Petitioner was not deprived of the right to face his accusers under said charge and to produce testimony in defense of the accusations. This was not a criminal proceeding. The Commission is the judge of its own procedure under Paragraph (e), Section 4 of the Charter of the City of Miami, which in part, reads as follows:

> "* * * The Commission may determine its own rules of procedure, may punish its own members for misconduct and may compel attendance of members. * * *"

> "* * * In so far as the legal weight and effect of administrative decisions of quasi-legislative or quasi-executive character is concerned, courts will not review such decisions for mere procedural errors or erroneous conclusions of fact, where the administrative agency, in arriving at a decision, violated no rule of law and record as entirety does not show abuse of delegated authority or arbitrary or unreasonable action."

State vs. Whitman, 116 Fla. 196, 150 So. 136.

In the case of **Etzler vs. Brown,** 58 Fla. 221, 50 So. 416, the Supreme Court of Florida sustained the removal of a detective by a municipal council who received daily reports of a detective used in the case while in executive session:

"* * * The action taken by the council, was publicly done and so recorded. The council was not trying the relator for the purpose of convicting him of a crime, and the strict rules of criminal procedure were not essential where no substantial rights of the relator were denied to him."

POINT F. Commissioner Hosea who Petitioner attempted to disqualify on ground of prejudice, denied any prejudice, the record reveals none, and there is no provision for the disqualification of a Commissioner in proceedings of this sort or for the qualification of a successor.

Nowhere does it provide in the Charter of the City of Miami a method or means for disqualifying any member of the Commission from acting in the event of the suspension of the Chief of Police, and no provision is made in the Charter for any City Commissioner to be appointed in the place or stead of one disqualified and to hear the charge as is the case in the disqualification of a judge. There is no provision in the general law of the State for the disqualification of a member of a commission. If members of the Commission could be disqualified by affidavit of prejudice, all members might be disqualified and a Chief of Police could never be tried. Disqualification of a judge is a judicial proceeding arising in a judicial hearing. The removal proceedings with which we are concerned was not a judicial hearing but was merely administrative.

"* * * If the charter creating a board makes no provision for disqualifying a member from acting in removal proceedings when he may be biased or prejudiced against the officer on trial, an objection to a member on that ground will not lie. Bias and prejudice on part of a commissioner not affecting his

judgment, will not disqualify him for hearing and determining charges against the chief of the department with a view to his removal."

McQuillin on Municipal Corporations, Vol. 2, 2nd Addition, Section 589, Page 366.

"* * * There being nothing in the general law of this State which would disqualify a member of the board to whom objection was made, and there being nothing in the act creating the board which would have this effect, then objection of the accused to the member sitting was proper overruled."

Tibbs vs. Atlanta, 125 Ga. 18, 53 S. E. 811.

POINT G. Statutory requirement prescribing a two-thirds (2/3) vote to effect the removal of a municipal officer is applicable only where there is no provision in a municipal charter prescribing removal procedure such as is present in the Charter of the City of Miami.

Counsel for the Petitioner rely upon the case of **State vs. Bloodworth,** 185 So. 1. This was a case in which the City Clerk of Miami was removed from office by the Commission of said City without charges and without a hearing and by the affirmative votes of but three members thereof. He was removed solely because he was about to certify as to the sufficiency of certain petitions which would initiate a recall against these same three (3) commissioners. Great public indignation prevailed because of this high-handed device employed by the three (3) Members of the Commission to keep themselves in office (these were the same three (3) Commissioners who placed Petitioner Quigg back in office after he had been removed

from office as Chief of Police on a prior occasion and his removal sustained by the Courts of the state).

Reading of the case reveals that the decision of the Supreme Court of Florida was based primarily upon the following factual situation:

1. No charges had been filed against the City Clerk.

2. The Clerk was not granted a hearing.

3. The attempted removal of the clerk was clearly for the purpose of preventing him from discharging the duties of his office.

4. There is no provision in the Charter of the City of Miami prescribing the method for the removal of its City Clerk.

Only this last point requires consideration now. For it was because the City Charter failed to provide a method for the removal of a City Clerk that the Supreme Court of Florida found it necessary to resort to the general law. The Court stated:

> "We find no provision in Chapter 10847, Special Acts of 1925, Laws of Florida, being the charter of the City of Miami giving the power or authority to the said City Commission to remove or discharge at will the clerk of said City. * * * In the absence of a provision of the charter of the City of Miami controlling the removal of its duly elected city clerk we therefore hold that the following general law applicable to all municipal corporations which control and guide the city commission of the City of Miami in the removal of its city clerk."

Ample provision is made, however, in the Charter of the City of Miami for the removal of its chief of police, and consequently there is neither reason nor legal justification in the instant case for recourse to or application to the general law referred to by the Supreme Court in the **State vs. Bloodworth** case. The procedure for the removal of the chief of police of the City of Miami is set forth in Section 26 of the City Charter, hereinabove set forth in the History of the Case section of this brief. Section 4 (e) of said City Charter provides that a majority of the members of the Commission may determine its own rules of procedure and that a majority of the members constitute a quorum to do business. Section 4 (f) prescribes how the Commission vote shall be recorded and that a majority, to-wit three (3) members thereof, may enact resolutions and ordinances. Pertinent portions of said Sections read as follows:

> "4 (e) A majority of all the members of the commission shall constitute a quorum to do business, but a smaller number may adjourn from time to time. * * *"

> "4 (f) Every ordinance or resolution shall require on final passage, the affirmative vote of a majority of all members. * * *"

The provisions of Sections 26, 4 (e) and 4 (f) of the Charter expressly empower the Commission to effect the removal of a chief of police by means of a resolution adopted by the affirmative vote of three (3) members of the Commission and these requirements were complied with meticulously by the Commission.

OBJECTIONS TO PRINTING ABBREVIATED RECORD

Counsel for Petitioner sought to stipulate with Counsel for Respondent for the printing of an abbreviated record. Portions which they sought to have eliminated could be material to the disposition of this cause in the event a Writ of Certiorari was granted. To illustrate, Counsel for Petitioner would have had us delete from the record the Bill of Particulars which we filed informing Petitioner of the numerous traffic ordinances of the City of Miami and the state laws which were violated in his presence on March 29, 1944, together with the names of the bus drivers and the numbers of the busses which were present at the strike or demonstration on said night. The Bill of Particulars also supplemented Charge No. 7, which has no relationship to the bus strike charges upon which Petitioner was removed, but revealed his incompetency, inefficiency and neglect of duty over a period of years. This Bill of Particulars supplemented and amplified the charges against Petitioner and were furnished to him upon order of the Commission of the City of Miami. If the Supreme Court of the United States should take jurisdiction of this cause it would be very necessary and proper that these specifications and particulars be contained in the record and for these reasons, Counsel for Respondent would not agree to their deletion.

Counsel for the Petitioner also wanted deleted from the record all testimony relating to Charge No. 7 which revealed the malfeasance, misfeasance and non-feasance of Petitioner over a period of some seven years. This Charge is unrelated to the bus strike situation, but was one of the charges upon which Petitioner was removed

from office, and which was sustained by the Supreme Court of Florida and this charge was commented upon by said Court in the following language:

> "* * * the charges, on which Chief of Police was convicted, accused him of neglect of duty * * * by reason of the fact, that he had permitted the police department to fall into a state of disorganization, disunity, discord and inefficiency."

This Charge No. 7 together with its Bill of Particulars, reveals clearly that Petitioner was not removed upon the basis of his neglect of duty on the night of the bus strike alone, but also because of all his sins of omission and commission over a period of years.

Counsel for Respondent, however, did present a stipulation to Counsel for Petitioner in which they agreed to eliminate substantial portions of the record. Counsel for Petitioner, however, would not agree to our stipulation.

CONCLUSION

WHEREFORE, Attorneys for Respondent respectfully request the Supreme Court of the United States to deny the Petition for Writ of Certiorari and to deny the Petition to Print an Abbreviated Record in the event the Writ of Certiorari should be granted.

Respectfully submitted:

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